

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-03-295 (1)
	§	C.A. No. C-05-341
ELADIO ESPINOZA-RAMIREZ,	§	
	§	
Defendant/Movant.	§	

**ORDER GRANTING APPLICATION FOR LEAVE TO PROCEED**  
**IN FORMA PAUPERIS AND COLLECTION ORDER**

On August 10, 2005, the district court denied Eladio Espinoza-Ramirez's ("Espinoza" or "Appellant") motion seeking relief under 28 U.S.C. § 2255. (D.E. 32).<sup>1</sup> Final judgment was entered on August 11, 2005. (D.E. 33). On September 29, 2005, Espinoza filed a document titled as an "Application for a Certificate of Appealability," which also requested leave to appeal *in forma pauperis*. (D.E. 34). In an order entered October 25, 2005, the district court construed the motion as a notice of appeal, and denied the request for a COA. (D.E. 35). In the same order, the district court noted that Espinoza had not provided any information concerning his prison trust fund account and, in particular, had not provided "a certified document showing the amount currently held in his inmate account, nor ... a certified record of his account transactions over the past six months." (D.E. 35 at 2). The court thus ordered him to provide such information not later than thirty days after entry of the order.

On November 14, 2005, the Clerk received from Espinoza a second motion to proceed *in forma pauperis*. (D.E. 38). Espinoza has failed to comply with the district court's prior order in that

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<sup>1</sup> Docket entry references are to the criminal case, Cr. C-03-295.

his new submission does not contain a list of transactions in Appellant's inmate account over the past six months. It does contain, however, a certification from a case manager at his institution stating that his account currently has a balance of \$2.84. The same certification also states that his average balance during the six months preceding the certification was "\$178.00 monthly." (D.E. 38 at 2).

In light of his failure to provide a detailed six-month record of his account, the undersigned has only limited information to review in order to determine whether Espinoza is entitled to proceed on appeal *in forma pauperis*. His average monthly balance of \$178, however, coupled with the statement in his earlier application that he receives money from family "once in a while" demonstrate that, although Espinoza cannot afford to prepay the \$255 appellate filing fee, he can pay the fee in installments without undue hardship.

While his appeal is not governed by the Prison Litigation Reform Act, there is no prohibition against collection of the appellate filing fee in installments where an inmate has the ability to pay in installments without undue hardship. Accordingly, the following orders are entered:

1. The Clerk shall file the Appellant's notice of appeal without prepayment of the appellate filing fee.
2. The Appellant is not required to pay an initial partial appellate filing fee.
3. The Appellant shall pay \$255, the balance of the full appellate filing fee, in monthly installments to the United States District Court.
4. The Bureau of Prisons shall deduct 20% of each deposit made to the Appellant's inmate trust account and forward payments to the United States District Court on a regular basis provided the account exceeds \$10.00.
5. The Appellant shall execute all consents and other documents required by the agency having custody of the Appellant to authorize the necessary withdrawals from his trust account.

6. The Clerk shall send a copy of this Order to the Inmate Accounting Officer and Paralegal Specialist, Allenwood Low FCI, P.O. Box 1500, White Deer, Pennsylvania 17887.

NOTICE TO THE APPELLANT:

If you do not wish to pay the appellate filing fee as set forth in this Order, you must notify the Court in writing, by letter or motion, that you do not wish to prosecute the appeal. Your notice must be mailed within 30 days of the date of this Order.

ORDERED this 25<sup>th</sup> day of November, 2005.

  
B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE